IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9656 of 1995
With
SPECIAL CIVIL APPLICATION No. 9657 of 1995
To
SPECIAL CIVIL APPLICATION No. 9662 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.THAKER

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PANDYA D MAGANLAL - Petitioner(s)
Versus
COLLECTOR & 2 - Respondent(s)

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Appearance :
MR YOGESH S LAKHANI for Petitioner(s) : 1,
Ms. Trusha Patel, Asst. GOVERNMENT PLEADER for Respondent(s) : 1,
MR CL SONI for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE K.M.THAKER

Date : 13/12/2007
ORAL COMMON JUDGMENT

This group of 7 petitions arise from notice dated 25.8.1995 issued by respondent No.1. All the aforesaid petitions contain almost similar facts and

the relief prayed for in the petitions are also similar, i.e., in all the petitions the petitioners have approached against notice dtd. 25.8.95 and have prayed for quashing and setting aside of the said show cause notice and the respondents are also common in all the petitions. Therefore the petitions are disposed of by this common order.

2. For the sake of convenience, the facts from the first petition, i.e., Special Civil Application No. 9656/1995 are stated. The facts in other petitions vary to limited extent as regard the date of receipt of lease deed and/or lease period, while the respondent authority who granted the lease is common in all petitions. In S.C.A. No. 9656 of 1995, it is stated by the petitioner that the petitioner is resident of Radhanpur and had tendered an application on 26.3.1993 to take certain land on lease. The petitioner had requested for lease in respect of land admeasuring about 58.80 sq.mtrs. situate in City Survey No. 2491. The petitioner has stated that respondent No.3 granted permission for lease of the land in favour of the petitioner by order dated 7.5.93 for 3 years w.e.f.,3.5.93, on the conditions mentioned in the order granting lease.

2.1. So far as SCA No. 9657 of 1995 is concerned, the application was made on 20.9.1993 for Survey No. 344 admeasuring about 500 sq.mtrs. The order granting permission for lease was made on 28.4.94 approving lease for a period of 5 years starting with effect from 1.5.94 and the construction permission came to be granted by order dated 19.9.94. Then, as per the impugned notice dated 25.8.95, an order dated 4.5.95 was passed and on that basis the impugned notice of 25.8.95 was issued.

2.2. So far as SCA No. 9658 of 1995 is concerned, the application was made on 20.9.1993 for Survey No. 344 admeasuring about 500 sq.mtrs. The order granting permission for lease was made on 28.4.94 approving lease for a period of 5 years starting with effect from 1.5.94 and the construction permission came to be granted by order dated 19.9.94. Then, as per the impugned notice dated 25.8.95, an order dated 4.5.95 was passed and on that basis the impugned notice of 25.8.95 was issued.

2.3. So far as SCA No. 9659 of 1995 is concerned, the application was made on 20.9.1993 for Survey No. 344 admeasuring about 500 sq.mtrs. The order

granting permission for lease was made on 28.4.94 approving lease for a period of 5 years starting with effect from 1.5.94 and the construction permission came to be granted by order dated 19.9.94. Then, as per the impugned notice dated 25.8.95, an order dated 4.5.95 was passed and on that basis the impugned notice of 25.8.95 was issued.

2.4 So far as SCA No. 9660 of 1995 is concerned, the application was made on 20.9.1993 for Survey No. 344 admeasuring about 1125 sq.mtrs. The order granting permission for lease was made on 28.2.94 approving lease for a period of 5 years starting with effect from 1.3.94 and the construction permission came to be granted by order dated 10.5.94. Then, as per the impugned notice dated 25.8.95, an order dated 4.5.95 was passed and on that basis the impugned notice of 25.8.95 was issued.

2.5. So far as SCA No. 9661 of 1995 is concerned, the application was made on 20.9.1993 for Survey No. 344 admeasuring about 1125 sq.mtrs. The order granting permission for lease was made on 28.4.94 approving lease for a period of 5 years starting with effect from 1.5.94 and the construction permission

came to be granted by order dated 19.9.94. Then, as per the impugned notice dated 25.8.95, an order dated 4.5.95 was passed and on that basis the impugned notice of 25.8.95 was issued.

2.6. So far as SCA No. 9662 of 1995 is concerned, the application was made on 20.9.1993 for Survey No.16/4, 6835 admeasuring about 186.20 sq.mtrs. The order granting permission for lease was made on 28.2.94 approving lease for a period of 5 years starting with effect from 1.5.94 and the construction permission came to be granted by order dated 14.5.94. Then, as per the impugned notice dated 25.8.95, an order dated 4.5.95 was passed and on that basis the impugned notice of 25.8.95 was issued.

3. The Condition No.2 of the orders granting lease required that it will not be permissible for petitioner to put up any type of construction without prior permission from Panchayat and that therefore the petitioner was not able to put up construction on the land for which it was granted lease. Thus, to overcome the said hurdle the petitioner made an application seeking permission for construction. In pursuance of the applications by the petitioners the

respondent No.1 Municipal Borough, after taking into consideration the Ribbon Development Rules, granted permissions for construction.

4. As per the petitioners' case, subsequently a notice dated 25.8.1995 came to be issued stating, inter alia, that the respondent Municipality did not have authority to pass the resolution for granting land on lease and that therefore the lease deed in favour of the petitioner was stayed permanently under the provisions of Section 258 of Gujarat Municipalities Act.

5. It is the case of the petitioner/s that pursuant to the permission for construction the petitioner put up the construction on the land in question and that, construction, has been completed. It also the common case of all the petitioners that the respondent No.1 has no power to suspend or revoke the resolution after passage of more than one year and that the order purported to have been passed by respondent No.1 was never communicated to the petitioner at relevant time and even otherwise the said order was in gross violation of principles of natural justice. In this regard, the petitioner/s

relied on the judgment of this Court reported in 1994 (1) GLH Page 470. On the said and such other allied grounds, the petitioners have challenged the communication dated 25.8.1995 urging, inter alia, that if the said communication is implemented or is not stayed and allowed to be implemented, then irreparable loss and injury would be caused to the petitioners.

6. Heard Mr. V.G.Dave, advocate for Mr. Lakhani, advocate for petitioners, Ms. Trusha Patel, AGP for respondent No.1, and Mr. C.L. Soni, advocate for respondent No.2.

7. It is pertinent that the averments and contentions in the petition have not been controverted or opposed, by way of any affidavit by respondent No.1. Although affidavits on behalf of respondents No. 2 and 3 have been filed, except in S.C.A. No. 9662 of 1995 (wherein the affidavit is not filed) the averments and contentions of the petitioners have not been controverted or opposed in the said affidavit of respondents No. 2 and 3 also. Thus, the averments of the petitioner to the effect that any order or notice said to have been passed on

10.5.1995 was never communicated to the petitioners and the order/notice dated 10.5.1995 as well as the impugned notice dated 25.8.1995 are in gross violation of principles of natural justice, are not denied by any of the respondents.

7.1. The affidavits by respondents No. 2 and 3 give out that the Assistant Inspector had made personal visit of the site and had submitted detailed report to the effect that the land in question was an open plot of land which if kept open might be subjected to encroachment and it was not forming part of public street and was about 15 metres away from the center point of ribbon line and that therefore considering all such aspects as well as the fact that there was no objection in granting the land on lease to the petitioner/s, the respondent No.2 had passed the resolution and subsequently in view of the application made in light of Condition No.2 of the lease, the permission for construction was granted. The affidavit of respondents No. 2 and 3 says that the impugned notice came to be issued by them since the respondent No.1 Collector, in exercise of powers under Section 258 of the Gujarat Municipalities Act, 1963, asked the respondent Municipality to take

necessary action against petitioner for taking possession of the plots. In other words, the stand of the respondents No. 2 and 3 is to the effect that the action in question came to be taken by the respondent No.2 only because of the instruction from respondent No.1, otherwise according to their perception there was no illegality in passing the resolution and/or granting permission for construction. Resultantly, the said affidavit, in substance and effect, though impliedly and indirectly, supports the case of the petitioner/s. As noted above, there is no affidavit by respondent No.1.

8. The petitions have been admitted since 1995 and almost 12 years have passed since then. At this stage, therefore, what is relevant to be taken into account is the fact that the lease initially granted to the petitioner/s was for a period of 3 years in case of petitioner of S.C.A. No. 9656/95 and 5 years in case of other petitioners. Thus, upon expiry of period of 3 years or 5 years as the case may be, the lease would have automatically come to an end, and consequently petitioners' lease right qua the lands in question would have also come to an end, lease

being a contract between the petitioner and said respondent. In such situation, the cause of action or grievance of the petitioner/s would otherwise also not survive after expiry of period of 3 years or 5 years from the date of lease. It is obvious that in view of the petition and the ad-interim relief granted by this Court, the impugned notices have not been acted upon and the petitioner/s continue to be in possession of the land in question. Consequently, the petitioners enjoyed lease for full period of 3 years or 5 years, as the case may be. The petitioners were even otherwise obliged to hand over the possession after expiry of lease period, irrespective of the impugned notices.

9. It has, however, come on record that some time before the date of expiry of lease period or immediately thereafter, the respondent No.2 had passed resolution in 3 out of 7 cases, i.e., in SCA No. 9657/95, 9659/95 and 9661/95 whereby it was resolved to renew the lease for a period of 9 years, i.e., upto December 2006. In other four cases, i.e., SCA No. 9656/95, 9658/95, 9660/95 and 9662/95, resolutions for renewal do not appear to have been passed. So far as the lease granted to the

petitioner in Special Civil Application No. 9656 of 1995 is concerned, it has come on record that no construction is carried out and the land in question is open land, however, in view of the pendency of the petition no action has been taken by the respondent Municipality. In other cases, constructions appear to have been carried out and the lands in question are in possession of the petitioners, however, the petitioners are not paying any rent. Under the circumstances, except in three cases, in all the matters the period of lease has expired either in 1996 or in 1999. In that view of the matter, the petitioners were even otherwise obliged to hand over the possession of the lands in question to the Municipality upon expiry of the lease period, i.e., in 1996 or in 1999 as the case may be. Even in 3 cases where the lease came to be renewed, the renewed lease period also have come to end since around 15.12.2006 and the said petitioners also are obliged to hand over the possession of the lands in question to the respondent Municipality.

10. In the cases where the respondent Municipality passed resolution and renewed the lease, the cause of action for present petitions expired

from the date on which the renewal of lease came to be granted in their favour. So far as the other petitioners are concerned, where the lease period come to an end, upon expiry of the period mentioned in the lease deed, i.e., 1996 or 1999, as the case may be, irrespective of the impugned notice, the petitioners are under obligation to hand over the possession to the respondent No.2 Municipality inasmuch as they got the possession of the land in question by virtue of the lease deed and the lease period in all cases has expired.

11. The statement, in which the aforesaid details are incorporated, is prepared by one Shri H.A. Ghanchi, Chitnis to Collector, Patan, and the said statement is placed on record after the copy of the same having been supplied to the petitioner/s advocate. The petitioner/s advocate has not disputed the contents of the said statement. Thus, the details mentioned in the said statement are required to be taken as uncontroverted. What follows from the said statement is that in all the 7 cases, as of now, the lease periods have expired i.e., in the cases where no renewal was granted, as well as in the cases where renewal was granted. It also follows that in

the interregnum, the petitioners have not paid rent, however, since the issue of payment or non-payment of rent is not raised in the petition the Court is not concerned with and is not required to go into the said issue.

12. On the facts summarised above and incorporated in the statement prepared by the office of respondent No.1, following facts transpire;

(1) The lease period in respect of the cases of all petitioners, where the lease were renewed as well as in the cases where lease were not renewed have come to an end.

(2) Thus, even otherwise, the lease right of the petitioners to hold the land have expired.

(3) The notices impugned in present petition were issued way back in 1995 at the time when the original-lease were in operation. Upon expiry of the lease period, the notices have lost their purpose and utility and their life came to end.

(4). The said notices were issued in light of orders said to have been passed in May 1995, however the petitioner/s allegations with regard to the said

order have remained uncontroverted and that therefore in other circumstances it would become necessary to set aside those notices, though by reserving right to the respondent authorities to serve fresh notices, if necessary in accordance with law and after following due procedure, however, in facts of present cases, such direction, so far as the original lease period is concerned, is not necessary inasmuch as the same has come to an end.

13. So as to avoid any objections or contentions from any side, either on the ground of limitation or otherwise, it is clarified that it will be open for the respondent authority to issue fresh notices to the petitioners after following due procedure and in accordance with law. It is another matter that the petitioners' allegation against the notices have remained uncontroverted and therefore in light of such fact the petitioners may, in different set of facts, e.g., where lease period has not expired, entitled to ask that the notices may be set aside in view of the order of this Court in SCA No. 5989/97 and 5992/97 and allied matters, but since the lease period have expired, it would otherwise also not be appropriate for the respondent authorities to bank

upon the said notices and/or to proceed on the basis of the said earlier notices, and it is not necessary to go into the legality of those notices which have become infructuous with passage of time as submitted by respondents' Advocate and not disputed by petitioners' Advocate.

14. As the petitions came to be preferred on the basis of the lease deed granted in favour of the petitioners and now that the period of lease have expired, the petitions even otherwise do not survive and the same have become infructuous since the very base has come to an end upon expiry of the lease period.

15. Thus, in light of the aforesaid discussion and in view of the situation obtaining as of now as regards the lease deeds and the lease periods, and in view of the details incorporated in the statement prepared by the office of respondent No.1, which is not disputed by the petitioners, the petitions are disposed of as infructuous. Rule discharged. Interim relief stands vacated. No order as to costs. It is, however, clarified that the respondent authorities shall issue notices in prescribed manner

and in accordance with law before taking actions in respect of the lands in question.

16. With the aforesaid clarifications, the petitions are disposed of.

[K.M. Thaker, J.]

RMR.